

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

RALPH SIMON,)	Case No. 4:14-cv-1136 (JAR)
)	
Plaintiff,)	
)	
v.)	
)	
SELECT COMFORT RETAIL CORP.,)	DECLARATION OF
)	HEATHER SOMERS
and)	
)	
SELECT COMFORT CORPORATION,)	
)	
Defendant.)	

I, Heather Somers, declare as follows:

1. I am Vice President and Associate General Counsel for Defendant Select Comfort Corporation (“Select Comfort”). I have personal knowledge of the facts stated herein, and if called as a witness to testify thereto, I could competently do so.

1. I am familiar with the Triumph system used by Select Comfort to collect data regarding customer service calls.

2. When a customer calls, it is up to the customer service representative’s discretion to accurately “code” the call relating to the chief topic of discussion. Calls related to mold or mildew inquiries are coded “mold/mildew” or “M/M.” Incidents coded as “mold/mildew” or “M/M” do not mean that the customer actually had a confirmed mold issue as this coding does not reflect confirmation and also includes questions/inquiries, miscodes, misidentification of stains, or simply an excuse to return the bed.

3. In connection with this litigation, I am aware that Select Comfort has produced data that reflect customer calls that were coded “mold/mildew” or “M/M” for the 5000 Series bed, from inception of that product through the end of the fiscal year 1999, which closely correlates with Ralph Simon’s purchase date of November 19, 1999.

4. Through fiscal year 1999, Select Comfort had sold 450,000 5000 Series beds. The data reflects 1,806 unique customers with a call to customer service coded “mold/mildew.”

5. By November 22, 1999, the entries described in paragraph 4 comprised 0.4% of Select Comfort’s total sales of 5000 series beds.

Date: August 28, 2015.

/s/ Heather Somers

Heather Somers